Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1282

PATRICK PETROLEUM CORPORATION OF MICHIGAN,
CHARLES DOUGLAS ROBINSON AND RONALD LAMAR MEEKS,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MICHAEL E. TIGAR
JOHN J. PRIVITERA
1302 18th Street, N.W.
Washington, D.C. 20036
Attorneys for
Charles Douglas Robinson

SAMUEL J. BUFFONE
JOHN MAGE
LYNNE BERNABEI
1302 18th Street, N.W.
Washington, D.C. 20036
Attorneys for
Patrick Petroleum Corporation

MICHAEL RAMSEY
Old Cotton Exchange
202 Travis at Franklin
Houston, Texas 77002
Attorney for Ronald Lamar Meeks

Press of Byron S. Adams Printing, Inc., Washington, D. C.

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IN THE

Supreme Court of the United States

October Term, 1979

No.

Patrick Petroleum Corporation of Michigan,
Charles Douglas Robinson and Ronald Lamar Meeks,
Petitioners,

v.

United States of America,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners Patrick Petroleum Corporation of Michigan (a Michigan corporation), Charles Douglas Robinson and Ronald Lamar Meeks [1] pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, reversing the dismissal by the United States District Court for the Southern District of Texas of the indictment against them for failure to state an offense against the United States.

OPINIONS BELOW

The opinion of the court of appeals, officially reported at 608 F.2d 542, is printed in the Appendix (App. C, 25a-33a). For the Court's convenience, the well-reasoned opinion of the district judge, reported at 457 F. Supp. 982, is also

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[1] William Thomas Kent and Lauren Lee Smith, Jr., parties below, are not seeking certiorari. Kent is a fugitive.

included in the Appendix (App. B, 21a-24a) along with the indictment which the district judge found insufficient (App. A, 1a-20a).

JURISDICTION

The judgment of the court of appeals was entered on December 17, 1979. A timely Petition for Rehearing and Suggestion of the Appropriateness of a Rehearing *En Banc* was denied on January 18, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

18 U.S.C. § 1341:

> *Whoever, having devised* or intending to devise *any scheme* or artifice *to defraud,* or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, *for the purpose of executing such scheme* or artifice or attempting to do so, *places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service,* or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, *shall be fined not more than $1,000 or imprisoned not more than five years, or both.* (Relevant portions italicized.)

QUESTIONS PRESENTED

1. What type of mailings may form the basis of a mail fraud indictment, specifically:

(a) After the victim of the alleged scheme has been deprived of the valuable confidential data (or other property) which it is the object of the scheme to obtain, are mailings reflecting the use of the data "for the purpose of executing" the scheme?

(b) Must an indictment for mail fraud contain a specific allegation of the relationship between the mailings and the alleged scheme to defraud?

(c) Are mailings to the victim of a scheme to defraud, which indicate that he has been defrauded and tend to identify the nature and beneficiary of the fraud, punishable under the mail fraud statute?

(d) Are routine business mailings, themselves intrinsically innocent, exempt from mail fraud prosecution, by analogy to the "required by law" doctrine of *Parr* v. *United States,* 363 U.S. 370 (1960)?

2. Is specific intent to defraud an element of the offense of mail fraud, and, if so, must not an indictment for mail fraud allege specific intent?

STATEMENT OF THE CASE

This case presents two closely-related questions concerning the scope and application of the mail fraud statute; both questions have vexed the courts of appeals, and were improperly decided by the court below in conflict with decisions of this court, including *United States* v. *Maze,* 414 U.S. 395 (1974).

The mail fraud statute, useful though it be, shares with that other darling of the prosecutor's nursery, conspiracy, a potential for great abuse. Mail fraud prosecutions are apparently on the increase. The number of federal fraud cases commenced in fiscal year 1977 was 4,986, a 317 percent increase over the number of such cases filed in fiscal year

1973.[2] While some of this increase is due to the use of mail fraud theories in political corruption cases, *see,* n.2, *supra,* this case presents a far more typical alleged fact pattern, and hence a more urgent need for this Court's guidance and supervision.

Simply put, the alleged fraud here consists of theft-type conduct, theft by an oil company employee of confidential data, followed by mailings which transported neither the allegedly stolen data nor any payments to the thief. As we show below, the government's theory succeeds only if isolated acts of defrauding can be transmuted into a continuing offense, contrary to a consistent course of this Court's decisions.

The indictment charges sixteen counts of mail fraud, 18 U.S.C. § 1341, and one count of conspiracy, 18 U.S.C. § 371, to commit mail fraud;[3] it charges a "scheme" to obtain valuable, confidential information from Union Oil Company about Union's leasing and drilling activities in Mississippi. A Union employee, Lauren Lee Smith, allegedly sold this information to William Thomas Kent, who in turn sold it to Patrick Petroleum Corporation.[4] The indictment goes on to charge that Patrick Petroleum obtained

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[2] Judicial Conference of the United States, *Annual Report of the Director of the Administrative Office of the United States Courts* (1977), page 253; *id.,* (1976), page 231. The designation "fraud" includes all federal fraud offenses, but there is much evidence that mail fraud prosecutions account for a large share of the increase. *See, e.g.,* C. Ruff, *Federal Prosecution of Local Corruption,* 65 Geo.L.J. 1171 (1977).

[3] A Department of Justice policy requires special approval before more than fifteen counts are brought. Petitioners do not know if such approval was obtained here.

[4] Smith has admitted stealing data and selling it to Kent. Kent is a fugitive. Patrick, Robinson and Meeks have denied knowing about any scheme to defraud Union Oil.

leases in Mississippi based on the information obtained from Kent, paid Kent commissions, and later attempted to sell an interest in the leases to Union Oil.

The alleged scheme was, in sum, to defraud Union Oil of:

(1) its right to have its business affairs conducted honestly;

(2) the loyal services of its employee, Smith;

(3) its property (App. A, p.2a).

However, none of the mailings alleged in the indictment relate to Kent's securing information from Smith, nor to payments from Kent to Smith. The indictment also does not allege that Kent ever used the mails in his dealings with Patrick Petroleum.

The mailings alleged in Counts 1, 2, 3, 4 and 11 relate to the delivery to Patrick Petroleum and Meeks of expense statements from lease brokers.

Counts 5, 6, 9 and 12 charge mailings between Patrick Petroleum's Vice President Robinson and its employee Meeks about leaseholds in Mississippi.

The mailings in Counts 6, 8, 10 and 13 of the indictment concern commissions to be paid by Patrick Petroleum to Kent through his trustees.

The mailings alleged in Counts 14, 15 and 16 relate to offers by Patrick Petroleum to Union Oil to sell partial interests in the Mississippi oil leases.

REASONS FOR GRANTING THE WRIT

1(a). *United States* v. *Maze,* 414 U.S. 395 (1974), has sparked a continuing debate in the courts of appeals. *See, e.g., United States* v. *LaFerriere,* 546 F.2d 182 (5th Cir. 1977); *United States* v. *Tarnopol,* 561 F.2d 466 (3d Cir. 1977); *United States* v. *Boyd,* 606 F.2d 792 (8th Cir. 1979).

At the heart of this case is an issue concerning the correct interpretation of the statutory words "scheme . . . to defraud". To be sure "schemes to defraud" may be as various as human ingenuity itself. *Maze, supra,* 414 U.S. at 407 (Burger, C.J., dissenting). There is no question, however, that the use of the mails must be in furtherance of—"for the purpose of executing"—the scheme. *Maze* teaches that the definition of "scheme . . . to defraud" is victim-related, in the sense that when the victim has been bilked of the thing of value which is the object of the scheme, an element of the offense is complete. Mailings which take place thereafter are presumptively not "for the purpose of executing the scheme",[5] unless they involve "lulling" the victim, as in *United States* v. *Sampson,* 371 U.S. 75 (1962).[6]

The indictment alleges a scheme to deprive Union Oil of confidential information. The value of such information to its possessor lies precisely in its secrecy, and the possessor suffers an immediate harm at the point confidentiality is breached. *Compare Abbott* v. *United States,* 239 F.2d 310, 314 (5th Cir. 1956), in which the data itself and payment for it were transmitted by mail.

Hence, allegations that the schemers intended to or did use the information in a certain way once it was obtained

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[5] The above analysis is applicable to schemes involving depriving a victim of a thing or things of value.

[6] The elements of a mail fraud offense are:

> "1. The Defendant willfully and knowingly devised a scheme or artifice to defraud, or for obtaining money or property by means of false pretenses, representations or promises, and
>
> "2. The Defendant used the United States Postal Service by mailing, or by causing to be mailed, some matter or thing for the purpose of executing the scheme to defraud." U.S. FIFTH CIRCUIT, DISTRICT JUDGES ASSOCIATION, Pattern Jury Instructions 102 (1979).

are irrelevant, both to the legality or illegality of their conduct and to the alleged relationship of the mailings to the scheme. So while the indictment contains allegations of plans and actions after Union's data was compromised, these do not affect the issue presented for decision.

In *Kann* v. *United States,* 323 U.S. 88 (1944), the defendants had siphoned off profits from government contracts through a dummy corporation. They caused checks to be written and cashed, and pocketed the proceeds. The mailings alleged to have been "for the purpose of executing" this scheme were made by the banks to collect the funds represented by the checks. This Court found these mailings not within § 1341, holding:

> "The persons intended to receive the money had received it irrevocably. It was immaterial to them, or to any consummation of the scheme, how the bank which paid or credited the check would collect from the drawee bank. It cannot be said that the mailings in question were for the purpose of executing the scheme, as the statute requires."

323 U.S. at 94.

See also Parr v. *United States,* 363 U.S. 370 (1960), discussed in *Maze, supra,* 414 U.S. at 400-401.

The only escape from the logic of *Kann* and *Maze* would be to consider theft-type schemes as continuing offenses. This door is closed, however, by the teaching of *Maze* itself. The issue is raised by this case and ought to be decided squarely by this Court as a means of supervising the administration of federal criminal justice.

Mail frauds involving theft-like takings cannot, by law or logic, be characterized as continuing offenses. That is, when someone decides unlawfully to appropriate the property of another, the moment of unlawful appropriation marks the end, as to a particular victim, of the scheme or

artifice to defraud. Later mailings will generally not be in furtherance of it as to that victim.[7]

Consideration of the "continuing offense" issue in this context can guide prosecutors and courts and illuminate the teaching of *Maze* and *Kann*. This Court has found there to be a continuing offense when the Congress has clearly mandated such a result, *e.g., United States* v. *Bailey,* No. 78-990, 48 U.S.L.W. 4104 (U.S., Jan. 21, 1980). More often, the decision has turned on considerations of lenity or constitutional values. In *United States* v. *Universal C.I.T. Credit Corp.,* 344 U.S. 218 (1952), a Fair Labor Standards offense was found to be "continuing" in order to foreclose multiple prosecutions for the same basic course of unlawful conduct. In *Toussie* v. *United States,* 397 U.S. 112 (1970), failure to register for the draft was held not a continuing offense because a contrary result would have greatly extended the statute of limitations. In *United States* v. *Johnson,* 323 U.S. 273 (1944), consideration of the sixth amendment right to trial in the vicinage led the Court to hold a false teeth offense not a continuing one.

The indictment dismissed by the district judge in this case seeks to make a theft-type scheme to defraud into a continuing offense, for the purpose of punishing a series of mailings which reflect nothing more than the usual response a petroleum company makes to new and potentially useful information about a potential source of oil. It hires lease brokers, pays royalty commissions, offers to sell portions of its interest. These mailings are even less connected to the alleged scheme than those at issue in *Kann*. To take one example, Count 8 alleges mailing of a check for the benefit of William Kent, who had a continuing interest in the

[7] Again, we recognize the "lulling" exception of *Sampson, supra.* "Check kiting" schemes are also held to present a special case, *e.g., United States* v. *Cooper,* 596 F.2d 327 (8th Cir. 1979), although such holdings are open to question in light of *Maze.*

mineral leases. If this check can be the subject of liability, then so could a similar payment at any time during the life of the lease and any renewals of it—five, ten or more years later. This illustration points up the wisdom of adopting an express rule that theft-type mail frauds are not continuing offenses.

Such a rule would also comport with the customary understanding of those crimes which the type of scheme alleged here most closely resembles: the theft offenses of larceny, embezzlement, and false pretenses. The time at which the elements of a theft offense are complete, and the offense committed, is fairly clear. *See generally* G. Fletcher, *Rethinking Criminal Law* § 1.2.5 (1978). By holding that presumptively the scheme is over as to a particular victim when the wrongful appropriation takes place, the Court would provide a clear approach to analyzing a significant proportion of fraud cases.

Finally, we note that holding theft-type mail frauds are not "continuing" would comport with the principle of *Krulewitch* v. *United States,* 336 U.S. 440 (1949) that there is no implied scheme to conceal a scheme.

1(b). The indictment in this case fails to allege how any mailing was "for the purpose of executing" the scheme. It is in the familiar pattern of an allegation of the scheme, incorporated by reference in each succeeding count, coupled with an allegation of mailing, with nary a connecting phrase or sentence of explanation.

Yet, as *Kann, Maze* and their progeny illustrate, the issue of relationship between the fraud and the mailing is troublesome and recurrent. For this reason, the indictment is subject to a special test:

> "Where guilt depends so crucially upon such a specific identification of fact, . . . an indictment must do more than simply repeat the language of the criminal statute."

Russell v. *United States,* 369 U.S. 749, 764 (1962), quoted in *Hamling* v. *United States,* 418 U.S. 87, 118 (1974).

This Court has recently noted that the functions of an indictment are to inform the accused of what he or she must meet and to set forth the offense in enough detail that the accused may plead double jeopardy if prosecuted again. *United States* v. *Bailey, supra,* 48 U.S.L.W. at 4109.

There is a third function, as this Court recognized in dismissing an indictment under a predecessor mail fraud statute:

> "To inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction if one should be had."

United States v. *Hess,* 124 U.S. 483, 487 (1888). And while it might be tempting to let the pleader always satisfy this requirement by tracking the statutory language,[8] the temptation should be resisted where the virtues of precise pleading have so obvious a reward: courts could, from the face of the indictment, test its allegations against the governing standards of *Maze, Kann,* and *Parr.*[9] *Compare United States* v. *Lamont,* 236 F.2d 312, 315 (2d Cir. 1956).

Judge Charles Clark, no stranger to the movement for simplified forms of pleading, cautioned against reverting to a "formalism of generality". *United States* v. *Lamont, supra,* 236 F.2d at 317. If the pleader is forced to make the crucial factual identification in the indictment, the court can determine whether the case can go forward without subjecting the defendant to the "expense" and "humiliation" of a trial. *Id.* at 314.

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[8] Of course a mail fraud indictment cannot simply track the statute, for § 1341 does not contain all elements of the offense. *See* 2, *infra.*

[9] A careful reading of *Parr* reveals that the holding rests in part upon the insufficiency of the indictment.

1(c). The mailings alleged in counts 14, 15 and 16 of the indictment present a special question. They could have served no purpose but to further—indeed to insure—detection of the alleged fraud. *See United States* v. *LaFerriere,* 546 F.2d 182, 197 (5th Cir. 1977). In essence, Patrick Petroleum was telling Union Oil that it had acquired substantial leasehold interests in an area of Mississippi in which Union was vitally concerned and in which Union had every reason to believe that both its interest and the basis for that interest were matters of strictest confidence. The transmission of Patrick's offer up the chain of Union's corporate command, as reflected in counts 15 and 16, would virtually have guaranteed that Union would act to see how Patrick had acquired the information which enabled it to obtain leasehold interests.[10]

This case thus offers an opportunity for the Court to decide whether mailings designed to ensure detection of the fraudulent scheme may form the basis of a prosecution under 18 U.S.C. § 1341.

1(d). In *Parr* v. *United States, supra,* this Court reversed a mail fraud conviction because the indictment did not allege and the proof did not show that the mailings in question—which consisted of letters, tax statements, checks, tax receipts and invoices—were other than the normal ones which would be sent and received by any school district in exercise of its statutory taxing powers. That is, the fact that petitioners—who were public officials—had devised a scheme to misappropriate tax funds was not

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[10] Indeed, that is exactly what happened. Counts 15 and 16 are based on letters and memoranda between Union's exploration department, regional land manager and Jackson, Mississippi land man on which one high Union official noted: "I do not favor any action which would bid these 'block' busters out and give them their money back plus a retained interest!"

sufficiently related to the mailings which formed a part of the tax-gathering process which produced the funds. One basis for the holding in *Parr* was that the mailings in question were required by state law.

The Third Circuit has taken *Parr* a step further. In *United States* v. *Tarnopol,* 561 F.2d 466 (3d Cir. 1977), record company executives diverted substantial quantities of inventory and pocketed the proceeds. The mailings consisted of business records which had been created in the course of manufacturing the inventory, a portion of which was diverted. The court of appeals reversed the conviction upon the following rationale:

> "[M]ailings taking place after the object of the scheme has been accomplished, . . . or before its accomplishment has begun, . . . are not sufficiently closely related to the scheme to support a mail fraud prosecution. Nor are routine mailings required by law which are themselves intrinsically innocent even though they take place during the course of carrying out a fraudulent scheme, the objective of which is the embezzlement of funds received in response to the mailings. *Parr* v. *United States*. . . . We do not believe that there is a valid distinction to be drawn between those routine mailings which are required by law and those routine mailings, themselves intrinsically innocent, which are regularly employed to carry out a necessary or convenient procedure of a legitimate business enterprise. In either case the mailings themselves are not sufficiently closely related to the fraudulent scheme to support a mail fraud prosecution even though securing the funds received through some of them is the object of the scheme to defraud, as was true in . . . *Parr*. . . . *See United States* v. *Brickey,* 296 F. Supp. 742, 748-749 (E.D. Ark. 1969). *A fortiori* if the documents received in the mailings are used by the perpetrators of the scheme merely as a convenient but not essential tool in carrying out that object, as in the case before us."

561 F.2d at 472.

Although without criticizing *Tarnopol* directly, the Eighth Circuit has taken a somewhat different view, in affirming the conviction in *United States* v. *Brown,* 540 F.2d 364, 376-77 (8th Cir. 1976).

This case presents an opportunity to survey the contours of the rule set out in *Parr.* Does *Parr* turn on the required character of the mailings; or as suggested in *Maze* and held in *Tarnopol* were routine mailings in *Parr* simply functionally unrelated to the scheme to defraud, so as not to be "for the purpose of executing" it?

Hiring lease brokers, paying commissions, offering leases for sale—these are the normal activities of petroleum companies engaged in leasing operations, whatever the source of their information about leasing prospects. There is, as we noted above, no allegation in this case that the mails were used to transmit the data from the defalcating Union Oil employee, or to send him money in payment.

A sound and even expansive reading of *Parr* would also tend to restrain the prosecutorial tendency to select for prosecution a large number of marginally-relevant mailings, resulting in an indictment which is cumbersomely long and carries a maximum penalty far in excess of that merited by the underlying wrongful conduct.

2. No lengthy discussion is needed to underscore the importance in this Court's recent decisions on the issue of intent. *See, e.g., United States* v. *United States Gypsum Co.,* 438 U.S. 422 (1978); *United States* v. *Bailey, supra.*[11]

Section 1341 does not contain such a requirement, but the courts have uniformly held that the intent to defraud is an element of the offense. *E.g., United States* v. *Payne,*

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[11] The indictment in *Bailey* did contain an allegation of intent. *See United States* v. *Bailey,* 585 F.2d 1087, 1095 n.22 (D.C. Cir. 1978).

474 F.2d 603 (9th Cir. 1973); *United States* v. *McNieve*, 536 F.2d 1245 (8th Cir. 1976). That being so, the indictment should contain an allegation of that intent, expressly and not by implication. This issue—whether the interpolated intent element must then be set out in the indictment—is worthy of this Court's attention.

CONCLUSION

For the foregoing reasons, petitioners respectfully pray that a writ of certiorari issue.

Respectfully submitted,

MICHAEL E. TIGAR
JOHN J. PRIVITERA
1302 18th Street, N.W.
Washington, D.C. 20036

Attorneys for
Charles Douglas Robinson

SAMUEL J. BUFFONE
JOHN MAGE
LYNNE BERNABEI
1302 18th Street, N.W.
Washington, D.C. 20036

Attorneys for
Patrick Petroleum Corporation

MICHAEL RAMSEY
Old Cotton Exchange
202 Travis at Franklin
Houston, Texas 77002

Attorney for Ronald Lamar Meeks

Dated: February 19, 1980

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CRIMINAL No. H-78-112

UNITED STATES OF AMERICA

VS.

WILLIAM THOMAS KENT,
PATRICK PETROLEUM CORPORATION OF MICHIGAN,
a Michigan Corporation,

CHARLES DOUGLAS ROBINSON
RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR.

Indictment

THE GRAND JURY CHARGES:

Count One

(1) At all times material to this Indictment:

(a) Defendant WILLIAM THOMAS KENT resided at the Houston House in Houston, Texas, and maintained an office at 711 Main Street, Houston, Texas.

(b) Defendant PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, maintained an office at 1901 C & I Building, Houston, Texas.

(c) Defendant CHARLES DOUGLAS ROBINSON resided in Michigan and was a Vice-President and authorized representative of defendant PATRICK PETROLEUM CORPORATION OF MICHIGAN.

(d) Defendant RONALD LAMAR MEEKS resided in Houston, Texas, and was employed as Division Land Man

and an authorized representative of defendant PATRICK PETROLEUM CORPORATION OF MICHIGAN in Houston, Texas, until about April, 1976, after which he was self-employed.

(e) Defendant LAUREN LEE SMITH, JR., resided in Houston, Texas, and was employed as a draftsman in the Houston, Texas office of Union Oil Company of California, a California corporation.

(2) Prior to April 1, 1975, and continuing to on or about April 18, 1977, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation (hereinafter referred to as PATRICK PETROLEUM CORPORATION), CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., devised a scheme and artifice to defraud the Union Oil Company of California (hereinafter referred to as Union Oil Company) of (a) its right to have its business and affairs conducted honestly, impartially, free from deceit, craft, trickery, corruption, fraud, undue influence, dishonesty, and conflict of interest; (b) its right to the conscientious, loyal, honest, faithful, disinterested and unbiased services, decisions, actions and performance of duties by defendant LAUREN LEE SMITH, JR. as a draftsman employed by Union Oil Company, free from corruption, partiality, wilful omission, bias, dishonesty, misconduct, conflict of interest, bribery and fraud; and (c) its property and secret profits obtained by defendant LAUREN LEE SMITH, JR., in the performance of his duties as a draftsman for the Union Oil Company.

(3) It was a part of the scheme and artifice to defraud that defendant LAUREN LEE SMITH, JR., as a draftsman employed by Union Oil Company, would and did have access to exclusive and confidential property of Union Oil Company consisting of maps, papers, drawings, documents, and information contained therein, reflecting geographic

and geological areas of the State of Mississippi in which Union Oil Company was leasing and planned to lease oil, gas and mineral rights, which data included buy-outlines, contour interval maps, prospect summaries, tract sheets, activity letters, authorities for expenditures, recommended Union Oil Company bids on "school board" lands, seismic profiles, development well analysis, prospective locations of oil wells, drilling schedules and well completion reports, all of which data reflected information and analysis collected, compiled and evaluated by Union Oil Company officers and employees, including geologists, geophysicists, technicians and landmen, for the exclusive use of Union Oil Company in exploring, locating, bidding, leasing and developing oil, gas and mineral resources in the State of Mississippi.

(4) It was a further part of the scheme and artifice to defraud that the defendant WILLIAM THOMAS KENT would and did tamper with the employer-employee relationship between Union Oil Company and defendant LAUREN LEE SMITH, JR. and subvert, and encourage, aid and assist in the subversion of, the fidelity and duty of defendant LAUREN LEE SMITH, JR. to Union Oil Company by bribing defendant LAUREN LEE SMITH, JR., that is, by paying and agreeing to pay defendant, LAUREN LEE SMITH, JR., for the aforesaid confidential and exclusive data and information belonging to Union Oil Company.

(5) It was a further part of the scheme and artifice to defraud that the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION, CHARLES DOUGLAS ROBINSON and RONALD LAMAR MEEKS would and did cause defendant LAUREN LEE SMITH, JR. to violate his employment agreement with Union Oil Company that he would not copy or disclose any documents, papers, or drawings coming into his possession or knowledge as an employee of Union Oil Company except in pursuance of his duties or as required by his employment or by law, and would cause defendant

LAUREN LEE SMITH, JR. to steal, purloin, abstract, copy and otherwise reproduce property of the Union Oil Company consisting of the aforesaid maps, documents, papers, drawings, bid recommendations, and information contained therein, and deliver and disclose the same to defendant WILLIAM THOMAS KENT on a continuing basis, while holding himself out and continuing to falsely and fraudulently pretend and represent himself as honest and loyal to the interests of his employer, the Union Oil Company, thereby defrauding Union Oil Company of his honest, loyal, faithful services, and depriving Union Oil Company of valuable property.

(6) It was a further part of the scheme and artifice to defraud that defendants PATRICK PETROLEUM CORPORATION, its Vice-President, defendant CHARLES DOUGLAS ROBINSON, and its employee, defendant RONALD LAMAR MEEKS, would obtain from defendant WILLIAM THOMAS KENT the aforesaid data and would, with knowledge that it was stolen from Union Oil Company and in anticipation and contemplation that Union Oil Company would continue leasing and undertake development and drilling activities in the areas of the State of Mississippi covered by and based on said data, hire brokers to move swiftly to procure leases for defendant PATRICK PETROLEUM CORPORATION in those areas of the State of Mississippi where the stolen data indicated leases had been obtained and were being sought by Union Oil Company, thereby impeding and thwarting Union Oil Company's leasing and development plans and depriving Union Oil Company of the rightful exclusive use and enjoyment of its own property.

(7) It was a further part of the scheme and artifice to defraud that after securing said leases in the State of Mississippi with the use and on the basis of said data stolen from Union Oil Company, defendant PATRICK PETROLEUM CORPORATION would be in a position to share in the production of wells developed and drilled by Union Oil Company

in Perry County, Mississippi; and defendants PATRICK PETROLEUM CORPORATION, CHARLES DOUGLAS ROBINSON and RONALD LAMAR MEEKS would and did endeavor to sell an interest in Hancock County, Mississippi leases to Union Oil Company and thereby recover defendant PATRICK PETROLEUM CORPORATION's complete costs of securing said leases while retaining a substantial interest in future royalties and production from said leases.

(8) It was a further part of the scheme and artifice to defraud that defendants PATRICK PETROLEUM CORPORATION, CHARLES DOUGLAS ROBINSON and RONALD LAMAR MEEKS, through checks and assignments of royalty interests made to the names of third parties, namely, J.J. Paul and Harold Gray, would and did covertly and deviously pay defendant WILLIAM THOMAS KENT a commission of ten dollars on each net mineral acre defendant PATRICK PETROLEUM CORPORATION leased in the State of Mississippi through the use of said data stolen from Union Oil Company, plus an overriding royalty interest in all such acreage so leased, as the leases were obtained on acreage in the State of Mississippi by defendant PATRICK PETROLEUM CORPORATION.

(9) It was a further part of the scheme and artifice to defraud that defendant WILLIAM THOMAS KENT would pay defendant LAUREN LEE SMITH, JR. a percentage of defendant WILLIAM THOMAS KENT's aforesaid commissions plus overriding royalty interests in the acreage leased by PATRICK PETROLEUM CORPORATION in the State of Mississippi through the use of the information stolen by defendant LAUREN LEE SMITH, JR. from Union Oil Company and furnished to defendant WILLIAM THOMAS KENT.

(10) On or about August 8, 1975, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan

corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon, a statement from Larry D. Bloomer for services and expenses in Hancock County, Mississippi, during the month of July, 1975, addressed to PATRICK PETROLEUM CORPORATION, Attention: Mr. Ron Meeks, 1901 C & I Building, Houston, Texas 77002.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Two

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about August 12, 1975, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon, a statement from John O'Connell for services and expenses in Perry County, Mississippi, during the month of July, 1975, addressed to PATRICK PETROLEUM CORPORATION, 1901 C & I Building, Houston, Texas 77002, Attention: Mr. Ron Meeks.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Three

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about August 29, 1975, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon, a statement from Hugh Story for services and expenses in Hancock County, Mississippi, from July 27 through August 25, 1975, addressed to PATRICK PETROLEUM CORPORATION, 1901 C & I Building, Houston, Texas 77002, Attention: Mr. Ronald L. Meeks.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Four

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about August 30, 1975, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be

delivered by the United States Postal Service, according to the directions thereon, a statement from Larry D. Bloomer for services and expenses in Hancock County, Mississippi, during the month of August, 1975, addressed to PATRICK PETROLEUM CORPORATION, Attention: Ron Meeks, 1901 C & I Building, Houston, Texas 77002.
(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Five

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about September 23, 1975, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, placed and wilfully caused to be placed in an authorized depository for mail matter in Houston, Texas, a memorandum dated September 23, 1975, from Ron Meeks to C.D. Robinson, Jackson, Michigan, to be sent and delivered by the United States Postal Service, which memorandum reflected net acres leased in Hancock County, Mississippi, in or for PATRICK PETROLEUM CORPORATION'S name, and a request to issue a commission check for $15,070.00 payable to Harold Gray.
(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Six

(1) The Grand Jury realleges and incorporates here in by reference all the allegations contained in Paragraphs

1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about November 13, 1975, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon, a letter dated November 11, 1975, from John Murdy to Mr. Ronald Meeks, Patrick Petroleum Corporation, 1901 C & I Building, Houston, Texas 77002, which letter referred to the Hancock County, Mississippi lease play and an enclosed assignment of overriding royalty interest from Patrick Petroleum Corporation of Michigan to Harold Gray.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Seven

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about December 1, 1975, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did place and wilfully cause to be placed in an authorized depository for mail matter in

Houston, Texas, a memorandum from Ron Meeks to C.D. Robinson, Jackson, Michigan, to be sent and delivered by the United States Postal Service, which memorandum referred to instruments pertaining to leases in Perry County, Mississippi.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Eight

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about January 30, 1976, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon, a letter dated January 28, 1976, from Kelly McClintic to Mr. Ronald L. Meeks, Patrick Petroleum Corporation, 1901 C & I Building, Houston, Texas 77002, which letter referred to an enclosed $7,200.00 check payable to J.J. Paul as commission for 720 acres leased in Hancock County, Mississippi.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Nine

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1

through 9 of Count One of this Indictment, and further alleges:

(2) That on or about February 10, 1976, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did place and wilfully cause to be placed in an authorized depository for mail matter in Houston, Texas, a memorandum from Ron Meeks to C.D. Robinson, Jackson, Michigan to be sent and delivered by the United States Postal Service, which memorandum referred to Issaquena County acreage in Mississippi and a copy of the Public Notice—Invitation to bid on Issaquena County acreage.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Ten

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about March 5, 1976, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon, a letter dated March 3, 1976, from

John Murdy that referred to an enclosed assignment of overriding royalty interest to J.J. Paul, which letter was addressed to Mr. Ronald L. Meeks, Patrick Petroleum Corporation, 1901 C & I Building, Houston, Texas 77002.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Eleven

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about March 19, 1976, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon, a statement dated March 17, 1976, from Hugh Story for services and expenses in checking county school land lease sales and bidding on Issaquena County school land, which statement was addressed to Patrick Petroleum Corporation, 1901 C & I Building, Houston, Texas, 77002, Attention: Mr. Ronald L. Meeks.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Twelve

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1

through 9 of Count One of this Indictment, and further alleges:

(2) That on or about March 19, 1976, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did place and wilfully cause to be placed in an authorized depository for mail matter in Houston, Texas, a memorandum from Ron Meeks to C.D. Robinson, Jackson, Michigan to be sent and delivered by the United States Postal Service, which memorandum referred to a J.J. Paul commission and assignment, and an Issaquena County lease.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Thirteen

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about March 29, 1976, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, and LAUREN LEE SMITH, JR., for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon,

a memorandum dated March 25, 1976, from L.F. Spelbring to Ron Meeks, Patrick Petroleum Corporation, Houston, Texas, which memorandum referred to an attached $5,200.00 check payable to J.J Paul, and an assignment of overriding royalty interest to J.J. Paul in a lease from Issaquena County, Mississippi.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Fourteen

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about June 3, 1976, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, and RONALD LAMAR MEEKS, for the purpose of executing the aforesaid scheme and artifice to defraud and attempting to do so, did place and wilfully cause to be placed in an authorized depository for mail matter in Houston, Texas, a letter from Ronald L. Meeks to Union Oil Company of California, 200 East Pascogoula, Jackson, Mississippi 39402, which letter contained an offer to sell a seventy-five percent interest in leases held by Patrick Petroleum Corporation in Hancock County, Mississippi for $294,000.00, such letter to be sent and delivered by the United States Postal Service.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Fifteen

(1) The Grand Jury realleges and incorporates herein

by reference all the allegations contained in Paragraphs 1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about June 10, 1976, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, and RONALD LAMAR MEEKS, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon, a memorandum dated June 8, 1976, from J.P. Foster to W.F. Bolding, Union Oil Company of California, 4635 Southwest Freeway, Houston, Texas, with an enclosed letter from Ronald L. Meeks dated June 3, 1976, offering to sell for $294,000.00 a seventy-five percent interest in leases held by Patrick Petroleum Corporation of Michigan on 2358.1 net acres in Hancock County, Mississippi.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Sixteen

(1) The Grand Jury realleges and incorporates herein by reference all the allegations contained in Paragraphs 1 through 9 of Count One of this Indictment, and further alleges:

(2) That on or about January 24, 1977, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, the defendants WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, and RONALD LAMAR MEEKS, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly cause to be delivered by the United States Postal Service, according to the directions thereon,

a memorandum from Bill Renfro to Mr. W.F. Bolding, Union Oil Company of California, Houston, Texas, with an enclosed letter from Charles Robinson proposing to sell for $260,281.11 a three-fourths interest in Patrick Petroleum Corporation leases of 2358.1 net acres in Hancock County, Mississippi.

(Violation: Title 18, United States Code, Sections 1341 and 2)

Count Seventeen

Commencing on or about April 1, 1975 and continuing to on or about April 15, 1977, in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, a Michigan corporation, CHARLES DOUGLAS ROBINSON, and RONALD LAMAR MEEKS, defendants herein, did wilfully and knowingly conspire, combine, confederate and agree together and with each other, and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, that is, to use the mails in furtherance and in execution of a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, which said scheme and artifice to defraud is set forth more fully in Paragraphs 1 through 9 of COUNT ONE of this Indictment which are realleged and incorporated herein by reference, the object of said conspiracy being violations of Title 18, United States Code, Section 1341.

In furtherance of the conspiracy and to effect the objects and purposes thereof, the defendants did commit in the Southern District of Texas, and elsewhere, the following:

Overt Acts

1. The said defendants did do and cause to be done the

acts set forth in COUNTS Two through SIXTEEN of this Indictment on the dates, at the places, and in the manner set forth therein, all of which are realleged and incorporated herein by reference.

2. On or about June 10, 1975, in Houston, Texas, defendant WILLIAM THOMAS KENT received from LAUREN LEE SMITH, JR. maps stolen from Union Oil Company of California.

3. On or about June 30, 1975, defendants CHARLES DOUGLAS ROBINSON and RONALD LAMAR MEEKS met with defendant WILLIAM TTOMAS KENT at the Houston House in Houston, Texas.

4. On or about July 1, 1975, defendants RONALD LAMAR MEEKS and WILLIAM THOMAS KENT met at the Red Carpet Restaurant in Houston, Texas, concerning lease acquisitions in Hancock County, Mississippi.

5. On or about July 5, 1975, in Houston, Texas, defendant RONALD LAMAR MEEKS instructed Larry Bloomer by telephone to obtain Tobin maps of a designated area in the State of Mississippi.

6. On or about July 7, 1975, in Houston, Texas, defendant RONALD LAMAR MEEKS asked Hugh Story when he could begin leasing in Hancock County, Mississippi on behalf of defendant PATRICK PETROLEUM CORPORATION.

7. On or about July 7, 1975, in Jackson, Michigan, defendant CHARLES DOUGLAS ROBINSON instructed Robert Robinson to begin leasing in Hancock County, Mississippi on behalf of defendant PATRICK PETROLEUM CORPORATION.

8. On or about July 9, 1975, in Houston, Texas, defendant RONALD LAMAR MEEKS instructed Larry Bloomer to begin leasing in Hancock County, Mississippi on behalf of defendant PATRICK PETROLEUM CORPORATION.

9. On or about July 10, 1975, in Houston, Texas, defendant RONALD LAMAR MEEKS instructed John O'Connell to begin leasing in Perry County, Mississippi on behalf of defendant PATRICK PETROLEUM CORPORATION.

10. On or about July 31, 1975, defendants RONALD LAMAR MEEKS and WILLIAM THOMAS KENT met at the Prime Minister Restaurant in Houston, Texas, concerning additional information on Hancock County, Mississippi.

11. On or about September 24, 1975, in Houston, Texas, defendants RONALD LAMAR MEEKS and WILLIAM THOMAS KENT met at Harborow's Restaurant in Houston, Texas concerning bids on county acreage in Hancock County, Mississippi.

12. On or about November 3, 1975 defendants RONALD LAMAR MEEKS and WILLIAM THOMAS KENT met at the Bull 'n Bear Restaurant in Houston, Texas regarding bids on school board leases in Hancock County, Mississippi.

13. On or about November 25, 1975 defendants RONALD LAMAR MEEKS and WILLIAM THOMAS KENT met at the Bull 'n Bear Restaurant in Houston, Texas concerning county school land bids in Hancock County, Mississippi.

14. On or about January 26, 1976 defendants RONALD LAMAR MEEKS and WILLIAM THOMAS KENT met at the Bull 'n Bear Restaurant in Houston, Texas regarding the upcoming bid on Kemper County acreage.

15. On or about January 26, 1976, defendants RONALD LAMAR MEEKS and WILLIAM THOMAS KENT met at the Prime Minister Restaurant in Houston, Texas, regarding Issaquena County acreage sale.

16. On or about February 4, 1976 defendants RONALD

LAMAR MEEKS and WILLIAM THOMAS KENT met at the Prime Minister Restaurant in Houston, Texas concerning Issaquena County bids.

17. On or about February 16, 1976 defendants RONALD LAMAR MEEKS and WILLIAM THOMAS KENT met at the Bull 'n Bear Restaurant in Houston, Texas regarding bids on Issaquena County acreage.

18. On or about February 18, 1976 defendants RONALD LAMAR MEEKS and WILLIAM THOMAS KENT met at Poor Devils' Restaurant in Houston, Texas to discuss the extension of the lease sale of Issaquena County, Mississippi acreage.

19. On or about March 11, 1976 defendants RONALD LAMAR MEEKS and WILLIAM THOMAS KENT met at Todd's Restaurant in Houston, Texas regarding bid on the Issaquena school acreage.

20. On or about March 23, 1976 defendants RONALD LAMAR MEEKS and WILLIAM THOMAS KENT met at the Bull 'n Bear Restaurant in Houston, Texas regarding the sale of defendant PATRICK PETROLEUM CORPORATION's Hancock County leases.

21. On or about February 14, 1977, in Houston, Texas defendant WILLIAM THOMAS KENT received a Union Oil Company map of Sellers Prospect from LAUREN LEE SMITH, JR.

22. On or about February 18, 1977 defendant WILLIAM THOMAS KENT mailed a map of Sellers Prospect to defendant CHARLES DOUGLAS ROBINSON in Jackson, Michigan.

23. On or about February 21, 1977, in Jackson, Michigan defendant CHARLES DOUGLAS ROBINSON received by mail a

map of Sellers Prospect from defendant WILLIAM THOMAS KENT.

(Violation: Title 18, United States Code, Section 371)

A TRUE BILL:

/s/ WILLIAM G. SHERWOOD
Foreman of the Grand Jury

/s/ J. A. "TONY" CANALES
United States Attorney

/s/ DOUGALD D. MCMILLAN
Trial Attorney
United States Department of Justice

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CRIMINAL NO. H-78-112

UNITED STATES OF AMERICA

v.

WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN,
a Michigan corporation,

CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS,
and LAUREN LEE SMITH, JR.,

Dougald McMillan, U.S. Department of Justice, Dallas, Texas, and Jack O'Donnell, Assistant United States Attorney, Houston, Texas, attorneys for Plaintiff.

Tigar & Buffone (Samuel J. Buffone), Washington, D.C., attorneys for Defendant Patrick Petroleum Corporation of Michigan.

Tigar & Buffone (Michael E. Tigar), Washington, D.C., attorneys for Defendant Charles Douglas Robinson.

Michael Ramsey, Houston, Texas, attorney for Defendant Ronald Lamar Meeks.

October 10, 1978

Memorandum and Order:

William Thomas Kent, Patrick Petroleum Corporation of Michigan, Charles Douglas Robinson, Ronald Lamar

Meeks, and Lauren Lee Smith, Jr. have been indicted on numerous counts of violating the federal mail fraud statute (18 U.S.C. § 1341). The Defendants are charged with concocting a scheme to defraud Union Oil Company of California of "(a) its right to have its business and affairs conducted honestly . . . , (b) its right to the conscientious, loyal . . . performance of duties by Defendant Lauren Lee Smith, Jr. [its employee] . . . , and (c) its property and secret profits obtained by Defendant Lauren Lee Smith, Jr. in the performance of his duties as a draftsman for the Union Oil Company." According to the indictment, William Thomas Kent persuaded Smith to funnel confidential geophysical information gathered by Union Oil to Kent. Kent then sold the information to Patrick Petroleum which allegedly knew that the data had been misappropriated. Patrick Petroleum employed brokers to procure oil and gas leases based on the data obtained from Kent.

Counts One through Sixteen involve substantive mail fraud violations. Count Seventeen alleges a conspiracy to use the mails in furtherance of a scheme to defraud. Defendant Smith has pleaded guilty to Count Eleven. Under a plea agreement, if he persists in such plea, the other counts against him will be dismissed. Defendants Patrick Petroleum, Robinson, and Meeks have filed a motion to dismiss the indictment for failure to allege an offense against the United States.

In order to charge the offense of mail fraud, there must exist a scheme to defraud and use of the mails for the purpose of executing that scheme. *Pereira v. United States,* 347 U.S. 1 (1954). The federal mail fraud statute does not reach all frauds, but only those in which the mails are used to execute the fraud. Other cases are left to state law. *Kann v. United States,* 323 U.S. 88 (1944). It is not enough that a scheme to defraud exists and that the defendant has caused the mails to be used in some tangential fashion. The mailing must be for the purpose of executing the scheme. *United States v. Maze,* 414 U.S. 395 (1974). From the face of this indictment, the mailings are not sufficiently closely related to the alleged scheme to bring them within the mail fraud statute. The scheme to defraud involved in this indictment was the tampering with the employer-employee relationship existing between Union Oil and Lauren Lee Smith and obtaining confidential geophysical data from Union Oil through its employee. There is no allegation that the mails were employed in this activity. The mailings made the subject of this indictment all deal with the activities of Patrick Petroleum and its operatives vis-a-vis the various Mississippi oil and gas leases. Count One is based on a statement from a Larry Bloomer to defendant Ronald Meeks, a Patrick Petroleum employee, for services and expenses in Hancock County, Mississippi. Count Nine is based on the mailing of a memorandum from Ronald Meeks to Charles Robinson which referred to acreage in Issaquena County, Mississippi, which was about to go on sale. Count Fourteen is based upon an offer to sell Mississippi acreage sent by Ronald Meeks to Union Oil. These counts are representative of the other mail fraud counts charged in the indictment.

In *United States v. La Ferriere,* 546 F.2d 182 (5th Cir. 1977), the Court stated that the close relation of the mailings to the scheme (required by *United States v. Maze, supra*) "does not turn on time or space, but the dependence in some way of the completion of the scheme or the prevention of its detection on the mailings in question." *Id.* at 187. In *United States v. Brickey,* 296 F.Supp. 742 (E.D. Ark. 1969), the Court explained the close relation required in the following manner:

> "Regardless of the particular language that a particular court may use in describing the necessary connection between the fraud and the use of the mails, it seems clear in the context of a criminal prosecution

that the connection must be real and proximate, not merely abstract or remote." at 748.

It is readily apparent that the scheme to defraud Union Oil of the honest services of Lauren Smith and to obtain Union Oil's secret geophysical data was in no way furthered or connected with the mailings made the basis of this indictment. Those mailings all related to the activities of Patrick Petroleum in acquiring oil and gas leases in Mississippi. Although the indictment alleges a continuing scheme of channeling confidential data to Thomas Kent and then to Patrick Petroleum, each and every mailing alleged in the indictment was remote from the misappropriation of the data and the defalcation of the Union Oil employee. Therefore, it is

ORDERED that the indictment be dismissed.

DONE at Houston, Texas, this 10th day of October, 1978.

/s/ Ross N. Sterling
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT.

UNITED STATES OF AMERICA, *Plaintiff-Appellant,*

v.

WILLIAM THOMAS KENT, PATRICK PETROLEUM CORPORATION OF MICHIGAN, CHARLES DOUGLAS ROBINSON, RONALD LAMAR MEEKS, AND LAUREN LEE SMITH, JR., *Defendants-Appellees.*

No. 78-3438.

Dec. 17, 1979.

Appeal from the United States District Court for the Southern District of Texas.

Before TJOFLAT and VANCE, Circuit Judges, and ALLGOOD, District Judge.*

VANCE, Circuit Judge:

The government appeals the dismissal of an indictment for mail fraud, 18 U.S.C. §§ 1341 and 2, and conspiracy to commit mail fraud, *id.* § 371, charged against Lauren Lee Smith, Jr., William Thomas Kent, Patrick Petroleum Corp. of Michigan, Charles Douglas Robinson, and Ronald Lamar Meeks. These charges arose from the alleged defalcation by Smith, receipt by Kent, and use by the other appellees of confidential geophysical data belonging to Smith's employer, Union Oil Co. of California. We find the indictment sufficient and reverse the order of dismissal.

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* District Judge of the Northern District of Alabama, sitting by designation.

I.

The indictment alleged that Smith, as a draftsman employed by Union Oil, had access to confidential documents concerning petroleum resources in the state of Mississippi. These documents included well completion reports, development well analysis, prospective well locations, recommended Union Oil bids, and related information. This material had been prepared for Union Oil by its employees, and Smith's employment agreement prohibited his disclosure of the company's confidential property.

Smith, Kent, Patrick Petroleum, Robinson, who was its vice president in Michigan, and Meeks, who was Patrick Petroleum's division land agent in Texas, allegedly "devised a scheme and artifice to defraud the Union Oil Company." This scheme consisted of fraudulently depriving Union Oil of "(a) its right to have its business and affairs conducted honestly . . . ; (b) its right to the conscientious, loyal, honest . . . performance of duties by . . . SMITH . . . free from . . . fraud; and (c) its property and secret profits obtained by . . . SMITH . . . ." The alleged scheme involved not only the fraudulent acquisition of Union Oil's property, but also the use of that property. Kent allegedly paid Smith to provide geological data, investment recommendations, and other confidential information, and then transmitted it to Patrick Petroleum, Robinson, and Meeks. Patrick Petroleum, Robinson, and Meeks allegedly used the purloined data to obtain leases for Patrick Petroleum, through hired real estate brokers in those areas where Union Oil had acquired or was seeking to procure leases. They then paid Kent a commission and assigned him an overriding royalty interest, and accomplished this through checks and assignments made to J. J. Paul and Harold Gray. Kent paid Smith a percentage of these commissions.

The first fifteen counts of the indictment incorporate the foregoing allegations and each describes one use of the mails in executing the fraudulent scheme. Counts 5, 6, 7, 9

and 12 allege that Smith, Kent, Patrick Petroleum, Robinson, and Meeks used the mails to send letters or memoranda between Robinson in the Michigan office and Meeks in the Texas office concerning oil leases of Mississippi property. Counts 1 through 4 and 11 charge that they used the mails to receive statements from the real estate brokers for their services and expenses in acquiring oil leases. Counts 5, 8, 12 and 13 allege that the five co-schemers used the mails to send checks to those brokers and accompanying memoranda to Robinson or Meeks. Counts 6, 8, 10, and 13 charge that they used the mails to send commission checks or royalty interest assignments to J. J. Paul or Harold Gray upon leasing oil property. Counts 14 through 16 allege that Kent, Patrick Petroleum, Robinson, and Meeks used the mails to send offers from Meeks or third parties to sell to Union Oil a part interest in some Patrick Petroleum leases.[1] Finally, count 17 charges that those four appellees conspired to use the mails to further this fraudulent scheme and artifice, and lists overt acts that include the events already mentioned, receiving stolen maps from Smith, holding meetings between Kent and Meeks to discuss leases, and instructing the brokers to lease particular oil properties.[2] These counts correspond to the theory that the appellees used Smith's data stolen from Union Oil to plan oil leases, used real estate brokers to obtain the leases, gave a commission and royalty interest to Kent upon acquiring leases, and made an offer to sell the oil rights to Union Oil, all following their entry into a scheme or artifice. Smith entered a plea of guilty to count 11, and, if he persists in that, the government will dismiss the other counts against him. The district court dismissed all seventeen counts of the indictment because it found the mailings to be

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[1] The actual wording of the indictment charged that they "knowingly" or "willfully" used or "caused" the use of the mails.

[2] Each count of the indictment except the last also alleged responsibility as a principal to the mail fraud. 18 U.S.C. § 2.

only incidental to the fraudulent scheme charged. *United States v. Kent,* 457 F.Supp. 982 (S.D. Tex. 1978).

II.

An indictment is sufficient if it contains all the elements of the alleged offense. *United States v. Lester,* 541 F.2d 499, 501-502 (5th Cir. 1976); *United States v. Mann,* 517 F.2d 259, 266-267 (5th Cir. 1975), *cert. denied.* 423 U.S. 1087, 96 S.Ct. 878, 47 L.Ed.2d 97 (1976). Indictment for mail fraud under 18 U.S.C. § 1341 requires (1) a scheme to defraud (2) which involves a use of the mails (3) for the purposes of executing the scheme. *United States v. Shryock,* 537 F.2d 207, 209 (5th Cir. 1976), *cert denied,* 429 U.S. 1100, 97 S.Ct. 1123, 51 L.Ed.2d 549 (1977);[3] *see United States v. Maze,* 414 U.S. 395, 399, 94 S.Ct. 645, 38 L.Ed.2d 603 (1974).[4]

In the present case the district court erred in delineating

[3] An implicit element of mail fraud is a specific intent to commit fraud. *United States v. Vasilios,* 598 F.2d 387, 392 (5th Cir. 1979); *United States v. Foshee,* 569 F.2d 401, 403 (5th Cir.), *modified on other grounds,* 578 F.2d 629 (5th Cir. 1978). Because the statute does not expressly mention intent, an indictment for mail fraud need not specifically charge the necessary specific intent. *United States v. Behrman,* 258 U.S. 280, 288, 42 S.Ct. 303, 66 L.Ed. 619 (1922); *United States v. Lester,* 541 F.2d 499, 501 (5th Cir. 1976). In any event, the indictment under challenge here actually did allege intent by charging that each mailing was done "knowingly" or "willfully." *See United States v. Kelley,* 546 F.2d 42, 42-43 (5th Cir. 1977). We therefore reject appellees' argument that the indictment was insufficient because it omitted intent.

[4] These three requirements should preclude federal prosecutors from reaching fraudulent transactions only incidentally involving the mails, because such schemes should be prosecuted under state laws, *Kann v. United States,* 323 U.S. 88, 95, 65 S.Ct. 148, 89 L.Ed. 88 (1944); *United States v. Edwards,* 458 F.2d 875, 880 (5th Cir.), *cert. denied sub nom. Huie v. United States,* 409 U.S. 891, 93 S.Ct. 118, 34 L.Ed.2d 148 (1972), or new federal legislation, *United States v. Maze,* 414 U.S. at 405 n. 10, 94 S.Ct. 645.

the scope of the alleged fraudulent scheme. As the lower court characterized it, the scheme involved only the "misappropriation of the data and the defalcation of the Union Oil employee." The indictment, however, alleges that the scheme being prosecuted involved more than a fraudulent acquisition. It charges that the scheme necessarily included Kent's acquisition of the purloined information, his sale of the data to Patrick Petroleum, its use of the data to acquire leases, and its attempted sale back to Union Oil and to others [5] of part interests in the lease. Use of the purloined data was part and parcel of the scheme alleged.

Because the district court misunderstood the scope of the alleged fraudulent scheme, it erred in determining that the purpose of the mailings charged was not to execute the fraudulent scheme:

> [T]he scheme to defraud Union Oil of the honest services of Lauren Smith and to obtain Union Oil's secret geophysical data was in no way furthered or connected with the mailings made the basis of this indictment. Those mailings all related to the activities of Patrick Petroleum in acquiring oil and gas leases in Mississippi. . . . [E]very mailing alleged in the indictment was remote from the misappropriation of the data and the defalcation of the Union Oil employee.

United States v. Kent, 457 F.Supp. at 983-84. We conclude, contrary to the district court, that the mailings could be found to have been "for the purpose of executing such scheme or artifice or attempting so to do," 18 U.S.C. § 1341.

[5] The appellees' responsibility for the mailings was also sufficiently alleged. *See Pereira v. United States,* 347 U.S. 1, 8-9, 74 S.Ct. 358, 98 L.Ed. 435 (1954); *United States v. Toney,* 598 F.2d 1349, 1355 (5th Cir. 1979).

The requisite statutory purpose exists if the alleged scheme's completion could be found to have been dependent in some way upon the information and documents passed through the mails, *compare United States v. LaFerriere,* 546 F.2d 182, 187, 187 n. 6 (5th Cir. 1977) *with United States v. Johnston,* 547 F.2d 282, 284 (5th Cir.), *cert. denied,* 431 U.S. 942, 97 S.Ct. 2660, 53 L.Ed.2d 261 (1977), and if the use of the mails was "an integral part of the scheme to defraud," *compare United States v. Melvin,* 544 F.2d 767, 775 (5th Cir. 1977) *with United States v. Netterville,* 553 F.2d 903, 910 (5th Cr. 1977), *cert. denied,* 434 U.S. 1009, 98 S.Ct. 719, 54 L.Ed.2d 752 (1978). *See United States v. Maze,* 414 U.S. at 399-403, 94 S.Ct. 645.[6] This test of dependence does not demand that the use of the mails rather than of a private messenger or other means was itself essential to the fraudulent scheme or that "the success of the scheme actually depended on the mailings in a 'but for' sense." *United States v. LaFerriere,* 546 F.2d at 188 n. 6. *Accord, United States v. Buchanan,* 544 F.2d 1322, 1325 (5th Cir. 1977). It instead requires that the thing mailed was an integral part of execution of the scheme so that the use of the mails was in this way "incident to an essential part of the scheme." *Periera v. United States,* 347 U.S. 1, 8, 74 S.Ct. 358, 362, 98 L.Ed. 435 (1954). *Accord, United States v. Buchanan,* 544 F.2d at 1325.

The dependence test is not met if use of the mails is made after the scheme has been fully consummated, but a fraudulent scheme may depend on a mailing even after the defrauders have received the sought-after money or documents, because "the use of the mails after the money is obtained [or documents stolen] may be for the purpose of executing the fraud. *United States v. Ashdown,* 509 F.2d 793, 799 (5 Cir. 1975)." *United States v. Zweig,* 562 F.2d 962, 964-65 (5th Cir. 1977). This is another way of saying that the scheme may embrace more than just fraudulent acquisition of money or documents. *E. g., United States v. Bright,* 588 F.2d 504, 508 (5th Cir. 1978), *cert. denied,* 440 U.S. 972, 99 S.Ct. 1537, 59 L.Ed.2d 789 (1979) (not just forgery of a will but appointing a co-schemer as the estate's attorney and guiding the forged will through probate; *United States v. Becker,* 569 F.2d 951, 964 (5th Cir. 1978) (not just sale of fraudulent options but the purchaser's subsequent exercise of those options).

[6] The dependence test is not met if the "use of the mails is only collateral or incidental to the scheme, or made after the scheme has been fully consummated or has 'reached fruition.'" *Henderson* v. *United States,* 425 F.2d 134, 141 (5th Cir. 1970). *Accord, Parr* v. *United States,* 363 U.S. 370, 390–91, 393, 80 S.Ct. 1171, 4 L.Ed.2d 1277 (1960). *E. g., United States* v. *Maze,* 414 U.S. 395, 94 S.Ct. 645, 38 L.Ed.2d 603 (1974).

The fraudulent scheme involving the acquisition and use of Union Oil's property charged in the indictment in this case could be found dependent on the documents mailed: the instructions mailed to real estate brokers to enter particular leases, the payments mailed to those brokers for services, the commissions and royalty assignments mailed indirectly to Kent to obtain the stolen data, and the offer mailed to Union Oil to sell it a part interest. These mailings were not incidental to the scheme if the materials mailed were integral to the plan's execution. As characterized in the indictment, the mailings were not made after fruition of the fraud, but were necessary to complete the scheme. *United States v. Zweig,* 562 F.2d at 964-65; *United States v. Ashdown,* 509 F.2d at 799. Because the appellees' scheme could be found dependent on the mailings charged in the indictment, we conclude that the indictment for mail fraud should not have been dismissed by the district court.[7] *Cf. Abbott v. United States,* 239 F.2d 310, 313-315 (5th Cir.

[7] We also believe that the indictment for acting as a principal to the mail fraud, 18 U.S.C. § 2; *see* note 2 *supra,* for the same reason should not have been dismissed.

1956) (scheme furthered by mailings between oil company employees who sold confidential geophysical information and recipient who bought oil leases).[8]

III.

The basis for the offense of conspiracy to commit mail fraud, 18 U.S.C. § 371, is "an agreement to use the mails to defraud." *Pereira v. United States,* 347 U.S. at 11, 74 S.Ct. at 364. *Accord, United States v. Netterville,* 553 F.2d at 908-09. This offense also requires implication of each appellee in the conspiracy. *United States v. Becker,* 569 F.2d at 961; *United States v. Netterville,* 553 F.2d at 911. In the instant case, appellees[9] could be found to have conspired in a fraudulent scheme dependent on documents and informationed mailed. The indictment for conspiracy to commit mail fraud should not have been dismissed, for the same reasons that the Supreme Court reversed dismissal of an indictment in *Sampson.*

> At the time the trial court dismissed the substantive counts it also dismissed the conspiracy counts without stating additional reasons. . . . Since the conspiracy count on its face, like the substantive counts on their

[8] As Justice Black concluded in a similar mail fraud case,

> [T]he indictment in this case alleged that the defendants' scheme contemplated from the start the commission of fraudulent activities which were to be and actually were carried out both before *and after* the money was obtained from the victims. . . . We cannot hold that such a deliberate and planned use of the United States mails by defendants . . . to be "for the purpose of executing" a scheme within the meaning of the mail fraud statute. For these reasons, we hold that it was error for the District Court to dismiss these . . . substantive counts.

United States v. Sampson, 371 U.S. at 80-81, 83 S.Ct. at 176 (emphasis added).

[9] Smith was not charged in the conspiracy count.

> faces, properly charges a separate offense against each of the defendants, it was also error to dismiss the conspiracy count.

371 U.S. 75, 81, 83 S.Ct. 173, 176, 9 L.Ed.2d 136 (1962).

REVERSED AND REMANDED.

Supreme Court, U. S.
FILED
APR 21 1980
MICHAEL RODAK, JR., CLERK

No. 79-1282

In the Supreme Court of the United States

OCTOBER TERM, 1979

PATRICK PETROLEUM CORPORATION OF MICHIGAN, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General

PHILIP B. HEYMANN
Assistant Attorney General

TERENCE J. LYNAM
Attorney
Department of Justice
Washington, D.C. 20530

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 25a-33a) is reported at 608 F.2d 542. The opinion of the district court (Pet. App. 21a-24a) is reported at 457 F. Supp. 982.

JURISDICTION

The judgment of the court of appeals was entered on December 17, 1979. A petition for rehearing was

denied on January 18, 1980. The petition for a writ of certiorari was filed on February 19, 1980 (a Tuesday following a Monday holiday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the indictment returned in this case sufficiently alleges offenses under the mail fraud statute, 18 U.S.C. 1341.

STATEMENT

By an indictment returned in the United States District Court for the Southern District of Texas, petitioners Patrick Petroleum Corporation of Michigan ("Patrick Petroleum"), Charles Douglas Robinson and Ronald Lamar Meeks were charged with 16 counts of mail fraud, in violation of 18 U.S.C. 1341 and 2, and one count of conspiracy to commit mail fraud, in violation of 18 U.S.C. 371 (Pet. App. 1a-20a).[1] Prior to trial petitioners moved to dismiss the indictment on the grounds, *inter alia*, that the mailings charged were insufficiently related to the alleged scheme to defraud to constitute offenses under the mail fraud statute. The district court granted the

[1] Also named in the indictment were Lauren Lee Smith, Jr. and William Thomas Kent. Smith pleaded guilty to one count of mail fraud upon agreement with the government that the other counts against him would be dismissed. Kent has been living in Belize, Central America, since April 1977. Proceedings to extradite him were initiated but have been held in abeyance pending resolution of the issue raised in this petition.

motion and dismissed the indictment (Pet. App. 21a-24a). The government appealed, and the court of appeals reversed (Pet. App. 25a-33a).

The scheme to defraud is alleged in paragraphs (1) through (9) of count one of the indictment (Pet. App. 1a-5a) and is incorporated by reference in each of the succeeding 16 counts. These paragraphs allege a scheme to defraud the Union Oil Company of California of its property; its right to have its business and affairs conducted honestly and free from deceit, trickery and conflict of interest; and its right to the loyal and honest services of its employee, Lauren Lee Smith, Jr. (*ibid.*). Specifically, the indictment alleges that the scheme to defraud involved (1) the bribery of Lauren Lee Smith, Jr., by William Thomas Kent to steal confidential oil exploration data from Smith's employer, Union Oil Company; (2) the use of that data by petitioner Patrick Petroleum and two of its employees—petitioners Robinson and Meeks—to procure oil, gas, and mineral leases in areas of Mississippi where the data indicated leases had been obtained and were being sought by Union Oil Company; and (3) attempts thereafter to sell an interest in such leases to Union Oil Company at a profit. The indictment further alleges that, as part of the scheme, Patrick Petroleum paid commissions and royalty interests to Kent on leases obtained through use of the Union Oil Company data and that such commissions and royalty interests, which Kent would share with Smith, were paid to Kent in the names of J.J. Paul and Harold Gray.

The mailings that form the basis of the 16 substantive counts in the indictment relate to that part of the scheme whereby petitioners used the confidential geophysical data they had acquired. Counts 1, 2, 3, 4, and 11 charge petitioners with knowingly causing statements for services and expenses of lease brokers to be delivered by mail to petitioners Patrick Petroleum and Meeks. The lease brokers were allegedly hired by Patrick Petroleum to secure leases in those areas in Mississippi where the stolen data indicated leases had been obtained or were being sought by Union Oil Company. As set forth in the indictment, the acquisition of these leases by Patrick Petroleum was part of petitioners' scheme to defraud Union Oil Company by impeding its leasing and development plans and depriving it of the rightful exclusive use and enjoyment of its own property (Pet. App. 4a).

Counts 5, 7, 9, and 12 charge petitioners with placing and willfully causing to be placed in the mails memoranda from Meeks to Robinson relating to the leasing activity in Mississippi; counts 5 and 12 additionally charge them with requesting the payment of commissions and assignment of royalty interests. Counts 6, 8, 10 and 13 charge petitioners with knowingly causing letters and memoranda relating to checks and assignments to Harold Gray and J. J. Paul for commissions and royalty interests in the Mississippi leases to be delivered by mail to petitioner Meeks. Counts 14, 15, and 16 charge petitioners with knowingly or willfully using the mails

to send letters and memoranda to Union Oil Company offering to sell to the latter the interests in the Mississippi leases owned by Patrick Petroleum. Finally, count 17 charges petitioners with conspiring to commit mail fraud, and it alleges overt acts in addition to those contained in counts 1 through 16, which are incorporated by reference.

In granting petitioners' motion to dismiss the indictment, the district court described the fraudulent scheme as encompassing only the alleged "tampering with the employer-employee relationship existing between Union Oil and Lauren Lee Smith and obtaining confidential geophysical data from Union Oil through its employee" (Pet. App. 23a). On the basis of this reading of the indictment, the court concluded that the alleged scheme was not "furthered or connected with" the mailings charged in the indictment to constitute offenses under the mail fraud statute (Pet. App. 24a).

The court of appeals reversed, holding that the district court "misunderstood the scope of the alleged fraudulent scheme" (Pet. App. 29a). The court found, *inter alia*, that, as characterized in the indictment, "the mailings were not made after fruition of the fraud, but were necessary to complete the scheme" (Pet. App. 31a).

ARGUMENT

1. We note initially that there is no need for this Court to grant the petition for a writ of certiorari at this time in order to review the question presented. The petition challenges the court of appeals' reversal

of the district court's pretrial dismissal of the indictment. That reversal puts petitioners in the same position they would have occupied had the district court denied their dismissal motions in the first instance. Such a ruling, not based on double jeopardy grounds, would not be subject to interlocutory appeal. *United States* v. *MacDonald*, 435 U.S. 850 (1978). Review by this Court of the present decision by the court of appeals would be similarly premature now. If petitioners are acquitted at trial, their claims will be moot; if they are convicted, and their convictions are affirmed, they will then be able to present all their claims to this Court in a petition for certiorari seeking review of the final judgment.

2. In essence, petitioners argue that the mailings charged in the indictment are too unrelated to the alleged fraudulent scheme to satisfy the statutory requirement that the mailings be "for the purpose of executing" the fraud (18 U.S.C. 1341). Petitioners characterize the scheme as one "to deprive Union Oil of confidential information" (Pet. 6)—a "theft-like taking" that reached fruition at "the moment of [the] unlawful appropriation" (Pet. 7).

Petitioners' argument proceeds from a narrow, incorrect characterization of the scheme charged in the indictment. The acquisition of the confidential geophysical data from Union Oil Company through Smith and Kent was only the initial step in the alleged scheme. The indictment also charged that it was part of the scheme that petitioners would obtain oil, gas, and mineral leases on the basis of the stolen

data through brokers hired for such purposes; that payments and royalty interests in the leases would be paid to Kent as compensation for obtaining the data; and that petitioners would endeavor to sell an interest in the leases to Union Oil Company, thereby recovering the costs incurred, while retaining an interest in future royalties and production (Pet. App. 1a-5a). The alleged scheme constituted far more than a "theft-like taking," for the fruits of the unlawful acquisition "would have been virtually worthless * * * had there been no prearrangement for their purchase and use." *Abbott* v. *United States*, 239 F.2d 310, 314 (5th Cir. 1956). Thus, the "[u]se of the purloined data was part and parcel of the scheme alleged" (Pet. App. 29a).[2]

Not until Patrick Petroleum obtained the leases in Mississippi and sold an interest in them to Union Oil Company did the fraudulent scheme come to fruition. Consequently, the use of the mails to receive state-

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[2] Petitioners err in relying on *United States* v. *Maze*, 414 U.S. 395 (1974), and *Kann* v. *United States*, 323 U.S. 88 (1944), for the proposition that a "theft-type" scheme cannot be considered a continuing offense that triggers the provisions of the mail fraud statute (Pet. 7). Virtually every scheme to defraud may be described as theft-like, in that the acquisition of money or property is the object of the scheme. See 18 U.S.C. 1341. This Court's decisions in *Maze* and *Kann* turned not on whether the scheme was theft-like but on whether the mailings had occurred after the scheme had reached fruition and hence could not have been for the purpose of executing the scheme. In the present case, all of the mailings charged in the indictment occurred before the scheme reached fruition.

ments from lease brokers (counts 1, 2, 3, 4 and 11), to send and receive information concerning the leasing activity (counts 5, 7, 9 and 12), to receive information concerning brokers' commissions and assignments of royalty interests in the leases (counts 6, 8, 10 and 13), and to transmit offers to sell an interest in the leases to Union Oil Company (counts 14, 15 and 16) were all "for the purpose of executing the scheme, as the statute requires." *Kann* v. *United States*, 323 U.S. 88, 94 (1944). The mailings charged in counts 1 through 16 were links in the chain by which the scheme would be accomplished. See *United States* v. *Brown*, 540 F.2d 364, 376 (8th Cir. 1976).

It is immaterial whether, as petitioners maintain (Pet. 8), the mailings reflect nothing more than the usual business response of a petroleum company to information about potential sources of new oil. In *United States* v. *Lea*, No. 79-1940 (7th Cir. Feb. 19, 1980), a mail fraud indictment charged the manager of a supermarket's meat purchasing department with receiving kickbacks from a meat broker. In return for the kickbacks, the manager purchased the broker's goods, enabling the broker to earn commissions from its clients. The court of appeals held that the mail fraud statute covered the broker's mailings of purchase confirmations and brokerage statements and its clients' mailings of commission checks. In so doing, the court characterized the mailings as "normal concomitants of the brokerage transactions and * * * therefore incident to an essential element of the scheme." The mailings thus satisfied the requirement

set forth in *Pereira* v. *United States*, 347 U.S. 1, 8 (1954), that the mailings be "for the purpose of executing" the fraudulent scheme. *United States* v. *Lea*, *supra*, slip op. 7. In the present case, as in *Lea*, the brokers' statements and commissions facilitated the achievement of one of the objects of the scheme—to secure the leases in the Mississippi property. See also *United States* v. *Bright*, 588 F.2d 504 (5th Cir.), cert. denied, 440 U.S. 972 (1979).[3]

Petitioners incorrectly characterize the mailings in counts 14, 15 and 16 as being "designed to ensure detection of the fraudulent scheme" (Pet. 11). As charged in the indictment, these mailings were designed to promote the ultimate goal of the scheme: selling interests in the Mississippi leases to Union Oil Company, and thereby allowing petitioners to re-

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[3] *United States* v. *Tarnopol*, 561 F.2d 466 (3d Cir. 1977), does not support petitioners' suggestion that routine business mailings are all NOT covered by the mail fraud statute. *Tarnopol* involved an embezzlement scheme whereby officers and employees of a legitimate business enterprise diverted some routine shipping confirmations for their own use and profit. Because the shipping confirmations were sent in connection with all sales, whether or not they were involved in the scheme to defraud, the court held that these mailings were too remote from the scheme to be regarded as furthering it.

Tarnopol is readily distinguishable from this case. The mailings charged in the instant indictment were not routine business procedures; they constituted part of petitioners' use of the stolen data. The success of the scheme need not have depended on the mailings in a "but for" sense. *United States* v. *Buchanan*, 544 F.2d 1322, 1325 (5th Cir. 1977). It is sufficient that the mailings were "incident to an essential part of the scheme." *Pereira* v. *United States*, *supra*, 347 U.S. at 8. That test is satisfied here.

cover their costs while retaining an interest in the leases. Because the indictment sufficiently charges these mailings as being in furtherance of the scheme, these counts, like the others, were properly held not subject to dismissal at this early stage of the proceedings. See *United States* v. *Castor*, 558 F.2d 379, 384-385 (7th Cir. 1977), cert. denied, 434 U.S. 1010 (1978).[4]

In any event, this case does not present the broad question of what relationship between a fraudulent scheme and particular mailings must be alleged to trigger the mail fraud statute. The problem in this case was simply that "the district court misunderstood the scope of the alleged fraudulent scheme" (Pet. App. 29a). The court of appeals correctly found that the indictment was sufficient: it alleged all the elements of the offense of mail fraud, and the mailings, as alleged in the indictment, could be found to have been for the purpose of executing the scheme or attempting to do so (*ibid.*).[5]

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[4] *United States* v. *LaFerriere*, 546 F.2d 182 (5th Cir. 1977), relied on by petitioners (Pet. 11), is inapposite to petitioners' challenge to counts 14, 15 and 16. In *LaFerriere* a mailing by a victim of the fraud to the perpetrator, alerting the latter to the fact that the victim strongly suspected he had been defrauded and threatening to take remedial action, was held not to be in furtherance of the scheme. The mailings by petitioners to their alleged victim, as set forth in counts 14, 15 and 16 of the instant indictment, however, served the opposite purpose—bringing the fraudulent scheme to fruition.

[5] Petitioners erroneously rely (Pet. 9-10) on language from *Russell* v. *United States*, 369 U.S. 749, 764 (1962), in contending that a mail fraud indictment must do more than track the language of the statute. *Russell* was not a mail fraud case. It involved a prosecution under 2 U.S.C. 192 for failure to answer questions posed by a congressional committee. In that special context, the Court held, the defendant was entitled to be apprised of the nature of the offense in more detail than was provided by a mere recitation of the statutory language. Whatever the applicability of *Russell* beyond the narrow context of a contempt prosecution, the indictment in this case went far beyond mere recitation of the statutory language, and described the fraudulent scheme and the unlawful mailings in great detail.

In addition to dismissing the 16 substantive counts, the district court also dismissed the conspiracy count (count 17). The court of appeals properly reinstated that count as well. The basis for the offense of conspiracy to commit mail fraud is "an agreement to use the mails to defraud." *Pereira* v. *United States*, *supra*, 347 U.S. at 11. Count 17 should not have been dismissed, because petitioners could be found to have conspired in a fraudulent scheme using the documents and information mailed. See *United States* v. *Sampson*, 371 U.S. 75, 81 (1962); *United States* v. *Tilton*, 610 F.2d 302, 308 (5th Cir. 1980).[6]

[6] Petitioners also suggest that this case merits review because the indictment does not contain an express allegation of intent to defraud. Because the statute does not expressly mention intent, the indictment need not expressly charge specific intent. See *United States* v. *Behrman*, 258 U.S. 280, 288 (1922); *United States* v. *Lester*, 541 F.2d 499, 501 (5th Cir. 1976). In any event, the instant indictment actually did allege intent by charging that each mailing was done "knowingly" or "willfully."

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

PHILIP B. HEYMANN
Assistant Attorney General

TERENCE J. LYNAM
Attorney

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RONALD LAMAR MEEKS,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITIONERS' REPLY MEMORANDUM

MICHAEL E. TIGAR
JOHN J. PRIVITERA
1302 18th Street, N.W.
Washington, D. C. 20036

Attorneys for
Charles Douglas Robinson

MICHAEL RAMSEY
Old Cotton Exchange
202 Travis at Franklin
Houston, Texas 77002

Attorney for
Ronald Lamar Meeks

SAMUEL J. BUFFONE
JOHN MAGE
LYNNE BERNABEI
1302 18th Street, N.W.
Washington, D. C. 20036

Attorneys for
Patrick Petroleum Corporation

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

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PETITIONERS' REPLY MEMORANDUM

We take the unusual step of filing a reply memorandum because the government's opposition presents a novel rationale, unsupported by this Court's prior decisions, for denying certiorari.

The Solicitor General asserts that the Court, as a matter of policy, should not grant the writ where, as here, the court of appeals has reversed the district court's dismissal of an indictment for failure to state an offense against the United States.

This case comes to the Court in the same procedural posture as *Adamo Wrecking Co. v. United States,* 434 U.S. 275 (1978), in which this Court reversed the court of

appeals, and upheld the district court's determination that an indictment under the Clean Air Act, 42 U.S.C. §1857 *et seq.*, failed to state an offense. Here, as in *Adamo*, the validity or invalidity of the indictment rests upon a "difficult question of statutory interpretation," 434 U.S. at 278.[1]

In the broader sense, the Solicitor's position impliedly suggests both a fundamental shift in the certiorari policy and a studied disregard for the letter and spirit of the Criminal Appeals Act, 18 U.S.C. §3731.

The issue posed by the Solicitor's argument could not have arisen before the amendment of the Criminal Appeals Act in 1970. Title III, P.L. 91-644, 84 Stat. 1890. Prior to 1970, the Act provided for direct government appeal to this Court from a dismissal of an indictment where, as here, an issue of statutory construction was involved. *See generally United States v. Wilson,* 420 U.S. 332, 336-39 (1975); *United States v. Sisson,* 399 U.S. 267, 291-96 (1970). The 1970 amendment, by further narrowing the "obligatory jurisdiction" of the Court,[2] furthers the purposes of the 1925 Act bestowing the certiorari jurisdiction.[3]

The 1970 amendment of §3731 assimilates cases involving pretrial construction of a federal statute in ruling on a motion to dismiss to all other cases brought here on certiorari: this Court, guided by the largely unwritten considerations determining grant or denial of the writ, selects those cases presenting issues worthy of its attention.

Conference Report No. 91-1768, 91st Cong., 2d Sess.,

[1]There is no question that the Court has jurisdiction under 28 U.S.C. §1254(1), and the government raises none.

[2]The phrase is that of Mr. Justice Harlan, quoted in *Bator. et al.,* Hart & Wechsler's The Federal Courts And The Federal System 1605 (2nd ed. 1973).

[3]*See id.* at 1600-29.

1970 U.S. Code Cong. & Adm. News 5849, states unequivocally:

> Although the conference substitute does not provide for direct appeal to the Supreme Court it is recognized that under section 1254 of title 28, United States Code, cases in the courts of appeal may be reviewed by the Supreme Court directly.

Neither in statute, nor legislative history, nor in the formal and informal jurisprudence of the writ can one find support for the suggestion that, on certiorari, defendants' petitions and the government's petitions should be viewed differently when they present, pretrial, a substantial issue of statutory construction.[4]

Moreover, validity of an indictment, though it may be raised on review of a conviction,[5] is a fundamental issue going to the very power of the district court to proceed. F.R.Crim.P. 12(b)(2), echoing a venerable common law tradition[6] provides that insufficiency of the indictment is not waivable and "shall be noticed at any time."

Here, as in *Adamo Wrecking, supra,* the questions cleanly and precisely tendered by the allegations of the indictment are, we respectfully suggest, squarely within the letter and rationale of Sup.Ct.R. 19.[7]

[4]*Compare Will v. United States,* 389 U.S. 90, 97-98 (1967).

[5]*See Parr v. United States,* 363 U.S. 370, 391 (1960) ("indictment did not charge. . . .")

[6]Compare the jurisdictional language in Federal Rule of Civil Procedure 12 (h)(3).

[7]District judges, faced with an increasing number of multi-defendant "big case" white collar prosecutions, would benefit from careful direction on pretrial resolution of statutory construction issues tendered by motions to dismiss the indictment. *See* Petition For Certiorari, p. 4, n.2 and accompanying text.

CONCLUSION

We respectfully pray that the writ of certiorari issue.

Respectfully submitted,

MICHAEL E. TIGAR
JOHN J. PRIVITERA
1302 18th Street, N.W.
Washington, D. C. 20036
Attorneys for
Charles Douglas Robinson

SAMUEL J. BUFFONE
JOHN MAGE
LYNNE BERNABEI
1302 18th Street, N.W.
Washington, D. C. 20036
Attorneys for
Patrick Petroleum Corporation

MICHAEL RAMSEY
Old Cotton Exchange
202 Travis at Franklin
Houston, Texas 77002
Attorney for
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